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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,589	12/01/2000	Erik Krimm	225/49427	1848

7590 11/03/2004

Crowell & Moring LLP  
Intellectual Property Group  
P O Box 14300  
Washington, DC 20044-4300

EXAMINER
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GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/726,589

Applicant(s)

KRIMM ET AL.

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-8,20,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,8,20,24 and 25 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 4, 8, 20, 24 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Sander, 6,182,527.

Regarding claim 1, Sander discloses, in Figures 1, 3 and 4, a functional component comprising at least three stamped parts **11, 12, 13**. One of the stamped parts **11, 12, 13** is a middle stamped part **11**. The stamped parts **11, 12, 13** lie flat sandwiched against one another. The stamped parts **11, 12, 13** are unreleasably connected to one another and each of the stamped parts **11, 12, 13** have at least two engagement holes **2, 7**. The engagement holes **2, 7** are arranged congruently with respect to one another. At least one of the engagement holes **2, 7** in the middle stamped part **11**, has a hole wall **16** provided with an elastomeric plastic cover **24**.

Regarding claim 4, the plastic cover **24** is around a hole edge **A** (see marked-up attachment; Fig. 4). Applicant is reminded that the method of forming the plastic cover by injection-moulding plastic is not germane to the issue of patentability of the functional component itself. Therefore, this limitation has been given limited patentable weight. See MPEP ' 2113.

Regarding claim 8, Sander discloses spacer lugs **A2** (see marked-up attachment; Fig. 3) on inner sides of the outer stamped parts **12,13** facing towards the middle stamped part **11**. The spacer lugs **22** are formed from a material that is harder than the injection-moulded plastic (claim 5, recites the plates made of metal and thus the lugs are made of metal; metal is harder than plastic).

Regarding claim 20, Sander discloses a gate plate comprising at least three stamped metal sheet parts **11-13** and an elastomeric plastic cover **24**. The parts **11-13** are stacked together sandwiched. Each of the parts **11-13** includes at least one engagement hole **7** aligned with engagement holes **7** in the other parts **11-13**. The cover **24** is provided to surround at least a portion of the engagement hole **7** in a middle one of the parts **11-13**.

Regarding claim 24, the cover **24** is clicked into place on the metal part **11** (Fig. 5 or Fig. 6)

Regarding claim 25, the cover **24** is injection-moulded onto the middle part **11**.  
(col. 5, line 48).

### ***Allowable Subject Matter***

Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 5, the prior art of record does not disclose or suggest a functional component comprising connecting webs leading from the plastic cover; and,

regarding claims 6 and 7, these claims depend from claim 5.

### ***Response to Arguments***

Applicant's arguments filed September 3, 2004 have been fully considered but they are not persuasive.

Applicant has argued that the examiner failed to provide reasons to support that the Sander's invention is the same as applicant's invention. Applicant is reminded that reasons are not required to reject the claim when the language of the claim have been anticipated by the reference and discussed in the rejections above.

Applicant further argued that the present invention and Sander's invention are completely different inventions as the claims of Sander's does not mention "at least three stamped metal sheet parts stacked together sandwiched", "each of the metal sheet parts including at least one engagement hole aligned with engagement holes in the other metal sheet parts" as recited in claim 20 of applicant's invention. Furthermore, applicant has argued that Sanders fails to claim each sheet part having at least two engagement holes as recited in claim 1 of applicant's invention.

In response, applicant is reminded that for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Therefore, the claim calls for three or more metal sheet parts, which are coupled by the elastic material. It is implied that once coupled, the sheet are sandwiched. Furthermore, even if applicant believes that the inventions are not the same, the claims of the reference U.S. patent or U.S. patent application publication and the application are obvious variants, and thus an affidavit or declaration under 37 CFR 1.131 is not an acceptable method of overcoming the rejection. See MPEP 706.02(b).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 9:30-6:00. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. Any inquiry of a

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general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.L.

E.G.

October 26, 2004



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600